

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LBS INNOVATIONS, LLC,

Plaintiff,

V.

BP AMERICA, et al.,

Defendant.

LBS INNOVATIONS, LLC,

Plaintiff,

V.

ALFRED ANGELO, INC., et al,

Defendant.

THE UNIVERSITY OF CHICAGO

Civil Action No. 2:11-cv-407
CONSOLIDATED
Lead Case

Jury Trial Demanded

Civil Action No. 2:12-cv-735

Jury Trial Demanded

**JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE OF DEFENDANTS
SAFEWAY, INC. D/B/A TOM THUMB AND RANDALL'S FOOD & DRUGS LP**

Plaintiff, LBS Innovations, LLC (“LBSI”) and Defendants Safeway, Inc. d/b/a Tom Thumb (“Tom Thumb”) and Randall’s Food & Drugs LP (“Randall’s”), by their respective counsel and pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, jointly stipulate and agree that Defendants Tom Thumb and Randall’s, and no other Defendant, shall be and hereby is dismissed WITHOUT PREJUDICE, with each party to bear its own costs, expenses and attorney’s fees, and stipulate as follows:

1. Plaintiff LBSI filed this action against Defendants Tom Thumb and Randall's on November 26, 2012, alleging that Defendants' websites, www.randalls.com and www.tomthumb.com which have store, dealer, or station location interfaces at <http://www.randalls.com/ShopStores/Store-Locator-Results> and

www.tomthumb.com/ShopStores/Store-Locator-Results respectively, infringe U.S. Patent No. 6,091,956 (“the ‘956 Patent”);

2. Plaintiff LBSI has also filed a separate action, *LBS Innovations, LLC v. Sally Beauty Supply LLC*, Civil Action No. 2:11-CV-409, on January 12, 2012, against Safeway, Inc. (“Safeway”) for infringement of the ‘956 Patent for its operation of the website www.safeway.com, which has a store, dealer, or station location interface at www.safeway.com/ShopStores/Store-Locator.page;

3. Defendant Randall’s is an indirect wholly owned subsidiary of Safeway and was so at the times of the filing of the two lawsuits, and “Tom Thumb” is a name Randall’s does business as.

4. Both lawsuits allege infringement by websites operated by Safeway and its wholly owned subsidiaries;

5. Plaintiff and Safeway agree that allegations against the Safeway websites (www.safeway.com; www.randalls.com; and www.tomthumb.com) can be included in the lawsuit against Safeway (*LBS Innovations, LLC v. Sally Beauty Supply LLC*, Civil Action No. 2:11-CV-409);

6. Plaintiff and Safeway agree that if Plaintiff dismisses this action against Tom Thumb and Randall’s, Plaintiff may include in its action against Safeway the allegations against Tom Thumb and Randall’s identified in the Complaint in this action and Plaintiff may amend its infringement contentions in *LBS Innovations, LLC v. Sally Beauty Supply LLC*, Civil Action No. 2:11-CV-409 to include allegations of infringement against Tom Thumb and Randall’s;

7. Plaintiff and Safeway agree that Safeway will assume the obligations of Tom Thumb and Randall’s for purposes of discovery and damages regarding the allegations against

the accused websites www.randalls.com and www.tomthumb.com, specifically that Safeway will respond to discovery just as if Tom Thumb and Randall's were named defendants and that Safeway will have whatever obligations for, and limitations on, damages that Tom Thumb and Randall's would have if Tom Thumb and Randall's were named defendants.

Based on the agreed stipulation above, Plaintiff LBSI and Defendants Tom Thumb and Randall's agree to dismiss this action without prejudice and Plaintiff's claims may be continued in *LBS Innovations, LLC v. Sally Beauty Supply LLC*, Civil Action No. 2:11-CV-409.

Dated February 26, 2013

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

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SAFEWAY, INC. D/B/A TOM THUMB AND RANDALL'S FOOD & DRUGS LP**

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**ATTORNEYS FOR DEFENDANTS
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically on 26th day of February, 2013 pursuant to Local Rule CV-5(a) and has been served on all counsel who are deemed to have consented to electronic service. Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Niky Bukovcan

Niky Bukovcan